

Impact Analysis

04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

Alcoholic Beverage Control Commission

Robert Hamilton, Rule Making Coordinator

4307 Mail Service Center, Raleigh, NC 27699-4307

phone – (919) 779-8323

Email – Robert.hamilton@abc.nc.gov

Authority: G.S. 18B-100; 18B-207; 18B-900, 18B-901(d), 18B-902, 18B-903, 18B-905, 18B-1000(3), 18B-1001, 18B-1008, 18B-1009

Impact Summary: State Government: No
 Local Government: No
 Substantial Economic Impact: No

These rule changes (see proposed text in appendix) are necessary to comply with Session Law 2013-83 that requires the North Carolina Alcoholic Beverage Control Commission to adopt rules for the suspension of alcohol sales in the latter portion of professional sporting events in order to protect public safety at the events and after the events. The provisions in the rule changes prohibit the use of branded clothing, carrying trays, coolers and other equipment for transporting malt beverages due to the requirements of keeping the three-tier system separate. There is also a provision in the rule changes that allows for the display of the product names and prices as long as the font size and font style are the same. This is to give the different brands an equal advertising opportunity.

Under the proposed rule, there are conditions on permittees who wish to sell malt beverages in stands:

- no wearing or displaying alcoholic beverage branded advertising;
- no using branded trays, coolers or other equipment;
- display guidelines for malt beverage product names and prices; and
- timeframes for the cessation of in-stand sales during professional sporting events.

The timeframes for the cessation of in-stand sales were drawn from the suggested information from TEAM (Techniques for Effective Alcohol Management) Coalition. TEAM Coalition is a alliance of professional and collegiate sports, entertainment facilities, concessionaires, stadium service providers, the beer industry, broadcasters, government traffic safety experts, and others working together to promote responsible drinking and positive fan behavior at sports and entertainment facilities.

Impact on the Private Sector

The decision to provide in-stand malt beverage sales is a voluntary decision that permittees of stadiums, ballparks and other similar public places with a seating capacity of less than 60,000 and equal to or over 3,000 cannot make under the current rules. Only permittees who choose to have in-stand sales might be impacted by these rule amendments.

There are three professional hockey teams, one professional basketball team, four professional soccer teams, one motorsports facility and nine professional baseball teams whose facilities have the potential to be impacted by the statute and rule changes. The professional hockey facilities have informed the ABC Commission they will not provide in-stand malt beverage sales due to potential safety concerns.

The N.C. Beer and Wine Wholesalers Association advocated for the statutory changes and stated they provided no data to legislators regarding increased malt beverage sales. They stated they do not foresee increased malt beverage sales. The primary reason for the requested statutory amendment was the increased convenience for the patrons. Fewer patrons would miss parts of the event by leaving their seats to purchase malt beverages, and there would be smaller lines at the concession booths. Although the N.C. Beer and Wine Wholesalers Association stated that they do not foresee increased sales of malt beverages to result from allowing in-stand sales in eligible sports facilities, the increased convenience could possibly result in at least some increase in sales at eligible venues. Based on available evidence, the commission is unable to estimate the potential impact on malt-beverage sales.

The rules do not require the permittees to spend additional funds on permits, clothing or equipment to transport the malt beverages. The rules do require the cessation of in-stand malt beverage sales at the later part of a sporting event, but does not require the cessation of malt beverage sales in the other approved areas of the facilities. Several professional sport associations already have established times for the cessation of alcoholic beverage sales that many of the professional sport venues have adopted, thus reducing the potential impact of the proposed rules.

The commission was unable to find any data or research in reference to in-stand malt beverage sales and thus is unable to determine the scale of any potential impact on malt beverage sales, driving under the influence of alcohol, motor-vehicle accidents, underage drinking, or serving to intoxicated persons. There is some evidence, based on the 2011 decision of West Virginia University to allow sales of malt beverages at home football games, indicating that increasing the convenience of purchasing malt beverages at sporting events may have little or no adverse impacts on alcohol-related incidents including violent behavior or driving under the influence.¹

¹ "Can selling beer help college fans drink less?" *Marketplace*. American Public Media. September 4, 2012. <http://www.marketplace.org/topics/life/freakonomics-radio/can-selling-beer-help-college-fans-drink-less>

Impact on State Government

There will be no impact on state government. All of the locations to offer in-stand malt beverage sales already have on-premises malt beverage permits. Thus, the ABC Commission will not issue any additional permits. The ABC Commission foresees little to no increase in malt beverages sales due to this rule change. Because of this, the commission believes there will be little to no impact on enforcement related costs to both State and local governments.

APPENDIX

04 NCAC 02S .0102 is proposed for amendment as follows:

04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission.

(b) Statutory Requirements. Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) Separate Permits Required. An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he or she wants permits, and ~~he~~ shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) Information Required on Application. An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant;
- (2) corporate, limited liability company or partnership name;
- (3) mailing address and location address of business for which permit is desired, and county in which business is located;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation or limited liability company, the name and address of agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by a power of attorney;
- (9) a diagram of the premises showing:
 - (A) entrances and exits;
 - (B) storage area for alcoholic beverages; and
 - (C) locations where alcoholic beverages will be served or consumed;
- (10) that the applicant is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner;
- (11) that the applicant intends to carry on the business authorized by the permit himself or under his immediate supervision and direction; and
- (12) that the applicant is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by a power of attorney, a resident manager to serve as attorney-in-fact

who will manage the business and accept service of process and official Commission notices or orders.

(e) General Restriction; Living Quarters. No permit for the possession, sale or consumption of alcoholic beverages shall be issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his licensed premises.

(f) General Restriction; Restrooms. No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. ~~This requirement shall be waived upon a showing that the permittee~~ The Commission will waive this requirement upon a showing by the permittee that he or she will suffer financial hardship or the safety of the employees will be jeopardized.

(g) Areas for Sales and Consumption. In determining the areas in which alcoholic beverages will be sold and consumed, the Commission shall consider the convenience of the permittee and his patrons, allowing the fullest use of the premises consistent with the control of the sale and consumption of alcoholic beverages, but will attempt to avoid consumption in areas open to the general public other than patrons.

(h) Temporary Permits for Continuation of Business. The Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit shall also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) Retail Sales at Public Places Restricted. The sale and delivery of alcoholic beverages by permitted retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place. No alcoholic ~~beverages, beverages~~ shall be sold, ~~served, served~~ or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums or bleachers at public gatherings.

As used in this ~~Rule, Paragraph~~, the term "enclosed establishment" includes a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) Separate Locations at Airport. If one permittee has more than one location within a single terminal of an airport boarding at least 150,000 passengers annually and that permittee leases space from the airport authority, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and 04 NCAC 02S .0519.

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business qualifies for an off-premise fortified wine permit only if it has and maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments and spices.

(l) Professional Sporting Events. Notwithstanding Paragraph (i) of this Rule, holders of a retail permit pursuant to G.S. 18B-1001(1) may sell malt beverages for consumption in the seating areas of stadiums, ball parks and similar public places with a seating capacity of 3,000 or more during professional sporting events pursuant to G.S. 18B-1009, provided that:

- (1) the permittee or the permittee's employee shall not wear or display alcoholic beverage branded advertising;
- (2) the permittee or the permittee's employee shall not use branded carrying trays, coolers or other equipment to transport malt beverage products;
- (3) the permittee or the permittee's employee may display the malt beverage product names and prices provided that all of the product names are displayed with the same font size and font style; and
- (4) in-stand sales shall cease, whichever is earlier, upon the cessation of other malt beverage sales or upon the commencement of:
 - (A) the eighth inning during baseball games, provided that if a single ticket allows entry to more than one baseball game, then the eighth inning of the final game;
 - (B) the fourth quarter during football and basketball games;
 - (C) the sixtieth minute during soccer games;
 - (D) the third period during hockey games;
 - (E) the final 25 percent of the distance scheduled for automotive races; and
 - (F) the final hour of the anticipated conclusion of a contest or event for all other events.

*History Note: Authority 18B-100; 18B-206(a); 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1001; 18B-1008; 18B-1009;
Eff. January 1, 1982;
Amended Eff. October 1, 2014; January 1, 2011; July 1, 1992; May 1, 1984;
Temporary Amendment Eff. October 25, 2013.*

Impact Analysis

04 NCAC 02T .0302 LABELS TO BE SUBMITTED TO THE COMMISSION

Alcoholic Beverage Control Commission

Robert Hamilton, Rule Making Coordinator

4307 Mail Service Center, Raleigh, NC 27699-4307

phone – (919) 779-8323

Email – Robert.hamilton@abc.nc.gov

Authority: G.S. 18B-100, 18B-206(a), 18B-207, 18B-1001(1), (2) and (16)

Impact Summary: State Government: No
 Local Government: No
 Substantial Economic Impact: No

These rule changes (see proposed text in Appendix) are necessary to comply with Session Law 2013-76 that requires the North Carolina Alcoholic Beverage Control Commission to adopt rules dealing with sanitation of growlers.

The proposed rule informs permittees that fill and refill growlers on demand that they do not need to submit labels to the ABC Commission for approval.

Impact on the Private Sector

There will be no impact on the private sector. Permittees did not have to receive approval for labels prior to the temporary rule change, nor will they need approval after.

Impact on State Government

There will be no impact on state government.

APPENDIX

04 NCAC 02T .0302 is proposed for amendment as follows:

04 NCAC 02T .0302 LABELS TO BE SUBMITTED TO COMMISSION

- (a) All labels for malt beverage and wine products shall be submitted in duplicate to the Commission on an "Application for Label Approval Form."
- (b) Each person requesting label approval shall furnish, in the application for label approval, the names and addresses of the manufacturer, bottler and importer of the product.
- (c) Notwithstanding Paragraphs (a) and (b), holders of retail permits pursuant to G.S. 18B-1001(1), (2) or (16) that fill or refill growlers on demand are not required to submit the labels required by Rule .0303(b) of this Section.

*History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-1001(1), (2) and (16);
Eff. January 1, 1982;
Amended Eff. October 1, 2014;
Temporary Amendment Eff. October 25, 2013.*

Impact Analysis

04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES

Alcoholic Beverage Control Commission Robert Hamilton, Rule Making Coordinator
4307 Mail Service Center, Raleigh, NC 27699-4307 phone – (919) 779-8323
Email – Robert.hamilton@abc.nc.gov

Authority: G.S. 18B-100, 18B-101(9), 18B-206(a), 18B-207, 18B-1001(1), (2) and (16), 27
C.F.R. 16.20 through 16.22

Impact Summary: State Government: No
 Local Government: No
 Substantial Economic Impact: Unlikely

This rule amendment (see proposed text in appendix) is necessary to comply with Session Law 2013-76 that requires the North Carolina Alcoholic Beverage Control Commission to adopt rules dealing with sanitation of growlers. This rule amendment is also necessary for the health and safety of the public. The label/tag requirements inform the public as to the growlers contents and also provide relevant information to track the distribution of the contents if there are problems with the product.

The proposed rule informs permittees that fill and refill growlers on demand that it is required that they affix a label or tag to the growler with specific information.

Impact on the Private Sector

The permittees that are referenced in the proposed rule change are affected by this rule. They will need to invest in a label printer with software to print labels or they will need to have tags made to meet this requirement.

There are approximately 19,000 on premises malt beverage, off premises malt beverage and wine shop permits that are currently valid, and we have identified fewer than twenty businesses that have opened to specifically provide filling and refilling of growlers on demand. Due to the requirement to have an on-premises or off-premises malt beverage permit or a wine shop permit to fill or refill growlers on demand and not a separate specific permit, unless the ABC Commission were to conduct a survey of currently permitted establishments, the commission cannot estimate the number of establishments that will offer this service.

Depending on the quantity, quality and size, bulk quantities of custom-made tags can be purchased for approximately \$0.10 per tag, plus shipping.

Label printers, including software, range from \$30 to over \$1,000. Depending on the quantity, quality and size, bulk quantities of labels can be purchased for approximately \$0.07 per label, plus shipping.

Without knowing shipping costs, at a minimum it would cost the permittee \$0.07 per growler to affix a label or tag. There would also be time-related costs associated with the time spent affixing labels or tags on growlers.

Due to the ABC Commission's inability to obtain information as to the number of permittees that will offer this service and the average number of fills per day, a minimum cost for providing this service cannot be provided. Based on the cost per tag for custom-made tags (excluding shipping and time-related costs), permittees would need to purchase at least ten million (10,000,000) growler tags per year to reach the threshold for a substantial economic impact (\$1 million in aggregate impact in any 12-month period).

The commission invites comments from stakeholders regarding the potential impact of the proposed rules on the costs, including time-related costs, involved in labeling and tagging growlers for fills and refills on demand.

Impact on the State Government

There will be no impact on state government.

APPENDIX

04 NCAC 02T .0303 is proposed for amendment as follows:

04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES

(a) Containers that are prefilled by the manufacturer shall be affixed with ~~Malt~~ malt beverage labels that shall contain the following information in a legible form:

- (1) brand name of product;
- (2) name and address of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents; ~~and~~
- (5) if the malt beverage is fortified with any stimulants, the amount of each (milligrams) per ~~container.~~ container; and
- (6) the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

(b) Growlers that are filled or refilled on demand pursuant to Rule .0309 of this Subchapter shall be affixed with a label or a tag that shall contain the following information in type not smaller than 3 millimeters in height and not more than 12 characters per inch:

- (1) brand name of the product dispensed;
- (2) name of brewer or bottler;
- (3) class of product (e.g., beer, ale, porter, lager, bock, stout, or other brewed or fermented beverage);
- (4) net contents;
- (5) if the malt beverage is fortified with any stimulants from the original manufacturer, the amount of each (milligrams) per container;
- (6) name and address of business that filled or refilled the growler;
- (7) date of fill or refill;
- (8) if the malt beverage is more than six percent alcohol by volume, the amount of alcohol by volume pursuant to G.S. 18B-101(9); and
- (9) the following statement: "This product may be unfiltered and unpasteurized. Keep refrigerated at all times."

(c) Growlers that are filled or refilled on demand pursuant to Rule .0309 of this Section shall be affixed with the alcoholic beverage health warning statement as required by the Federal Alcohol Administration Act, 27 C.F.R. Sections 16.20 through 16.22.

History Note: Authority G.S. 18B-100; 18B-101(9); 18B-206(a); 18B-207; 18B-1001(1), (2) and (16); 27 C.F.R. 16.20 through 16.22;
Eff. January 1, 1982;
Amended Eff. October 1, 2014; April 1, 2011;
Temporary Amendment Eff. October 25, 2013.

Impact Analysis

04 NCAC 02T .0308 GROWLERS

Alcoholic Beverage Control Commission

Robert Hamilton, Rule Making Coordinator

4307 Mail Service Center, Raleigh, NC 27699-4307

phone – (919) 779-8323

Email – Robert.hamilton@abc.nc.gov

Authority: G.S. 18B-100, 18B-206(a), 18B-207, 18B-1001(1), (2) and (16)

Impact Summary: State Government: Minimal
 Local Government: No
 Substantial Economic Impact: Unclear

These rule changes (see proposed text in appendix) are necessary to comply with Session Law 2013-76 that requires the North Carolina Alcoholic Beverage Control Commission to adopt rules dealing with sanitation of growlers. This rule amendment is necessary to further define a growler and further explain which permittees can prefill growlers and which permittees can fill and refill growlers on demand. This provides necessary information in reference to the proposed adoption of the rule that requires the sanitation of growlers, 04 NCAC 02T .0309.

Under the amended rule, On-premises Malt Beverage, Off-premises Malt Beverage and Wine Shop permittees can voluntarily decide whether they want to fill or refill growlers on demand with malt beverages.

Impact on the Private Sector

While these are voluntary decisions, they are decisions the on-premises malt beverage, off-premises malt beverage and wine shop permittees cannot make under the current rules. Therefore, depending on whether the permittees choose to act on this proposed allowance in the rules, there might be an impact.

It is very difficult, however, to quantify the potential impact of the rule change, given the lack of information. There are approximately 19,000 on-premises malt beverage, off-premises malt beverage and wine shop permits that are currently valid. Due to the requirement that a business establishment is required to have an on-premises or off-premises malt beverage permit or a wine shop permit to fill or refill growlers on demand and not a separate specific permit, unless the ABC Commission were to conduct a survey of currently permitted establishments, the commission cannot estimate the number of establishments that already have the required permits that will offer this service.

The ABC Commission has identified fewer than twenty businesses that have opened to specifically provide filling and refilling of growlers on demand. The ABC Commission has

already received \$4,000 in revenue from these permittees' permit fees. The ABC Commission would receive an additional \$2,000 each year thereafter if the number of these businesses stays the same.

Due to considerable uncertainty, based largely on a lack of sufficient data from other states with similar rules, regarding the impact of the proposed rule on the market for filled growler and on-demand growler fills, it is unclear whether the rule change would have a substantial economic impact (i.e., an aggregate impact over \$1 million per year) or not.

Prior to this proposed rule change, only breweries were allowed to fill and refill growlers on demand with malt beverages. Breweries have charged a minimum of \$9 for a growler fill and a minimum of \$5 for the purchase of a growler, but fill prices and growler prices vary among breweries and can vary depending on the size and material of the growler and the type of malt beverage.

The commission believes that, at least in the short term, some breweries will likely experience a decrease in growler sales and fills to result from the proposed rules due to some consumers shifting growler purchases and growler fills from breweries to newly eligible permittees. In the medium or long term, however, it is conceivable that allowing growler sales and fills at establishments other than breweries could increase the general popularity of growler fills enough to more than compensate for the likely shift of some of the existing growler market away from breweries toward other permittees.

The commission also believes that there will likely be a small shift in the market share among different brands of malt beverages, as some consumers are likely to shift their purchases toward purchasing more filled growlers for off-premises consumption instead of malt beverages sold by retailers in six-packs, twelve-packs or cases.

The commission invites comments from stakeholders regarding the potential impact of the proposed rules on the market for malt beverages, including potential changes in malt beverage market share.

Impact on State Government

The ABC Commission has identified fewer than ten businesses that have opened to specifically provide filling and refilling of growlers on demand. The ABC Commission already received \$4,000 since they have permits. The ABC Commission would receive an additional \$2,000 each year thereafter if the number of these businesses stays the same.

APPENDIX

04 NCAC 02T .0308 0303 is proposed for amendment as follows:

04 NCAC 02T .0308 GROWLERS

(a) As used in this Rule, a growler is a refillable rigid glass, ceramic, plastic, aluminum or stainless steel container with a flip-top or screw-on lid that is no larger than 2 liters (0.5283 gallons) into which a malt beverage is ~~poured~~ prefilled, filled or refilled for off-premises consumption.

(b) Holders of only a brewery permit ~~that have retail permits pursuant to G.S. 18B-1001(2), may sell growlers filled~~ may sell, deliver and ship growlers prefilled with the brewery's malt beverage for off-premises consumption provided a label is affixed to the growler that accurately provides the information as required by ~~04 NCAC 02T .0303~~ Rules .0303(a) and .0305 of this Section.

(c) Holders of retail permits pursuant to G.S. 18B-1001(1), (2) or (16), who do not hold a brewery permit, shall not prefill growlers with malt beverage.

(d) Holders of a brewery permit that also have retail permits pursuant to G.S. 18B-1001(1), may fill or refill growlers on demand with the brewery's malt beverage for off-premises consumption provided the label as required by Rules .0303(b) and .0305 of this Section is affixed to the growler.

(e) Holders of retail permits pursuant to G.S. 18B-1001(1), (2) or (16), may fill or refill growlers on demand with draft malt beverage for off-premises consumption provided the label as required by Rules .0303(b) and .0305 of this Section is affixed to the growler.

~~(e) Holders of a brewery permit that have retail permits pursuant to G.S. 18B-1001(2), may refill customer's growlers provided a label is affixed to the growler that accurately provides the information as required by 04 NCAC 02T .0303 and .0305.~~

~~(d) Breweries that refill growlers sold by other breweries shall relabel the growler prior to filling it with malt beverage.~~

~~(e) Breweries that refill growlers sold by other breweries shall remove, deface or cover any permanent or non-permanent labels prior to affixing a new label.~~

(f) Holders of retail permits pursuant to G.S. 18B-1001(1), (2) or (16), shall affix a label as required by Rules .0303(b) and .0305 of this Section to the growler when filling or refilling a growler.

(g) Holders of retail permits pursuant to G.S. 18B-1001(1), (2) or (16), may, in their discretion, refuse to fill or refill a growler, except in matters of discrimination pursuant to G.S. 18B-305(c).

*History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-305; 18B-1001(1), (2) and (16);
Eff. April 1, 2011;
Amended Eff. October 1, 2014;
Temporary Amendment Eff. October 25, 2013.*

Impact Analysis

04 NCAC 02T .0309 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING

Alcoholic Beverage Control Commission

Robert Hamilton, Rule Making Coordinator

4307 Mail Service Center, Raleigh, NC 27699-4307

phone – (919) 779-8323

Email – Robert.hamilton@abc.nc.gov

Authority: G.S. 18B-100, 18B-206(a), 18B-207, 18B-1001(1), (2) and (16); FDA Food Code 2009, Section 3-304.17(c) and Section 4-204.13(a), (b) and (d);

Impact Summary:	State Government: No
	Local Government: No
	Substantial Economic Impact: Unclear

This rule adoption (see proposed text in appendix) is necessary to comply with Session Law 2013-76 that requires the North Carolina Alcoholic Beverage Control Commission to adopt rules dealing with sanitation of growlers. The adoption is also necessary for the health and safety of the public. By following this rule, a permittee will reduce the chances of cross-contamination between growlers.

Under the adopted rule, On-premises Malt Beverage, Off-premises Malt Beverage and Wine Shop permittees can voluntarily decide whether they want to fill or refill growlers on demand with malt beverages. If they decide to provide this service then they must adhere to one of two different cleaning methods or they must fill the growlers in a specific way.

Impact on the Private Sector

While these are voluntary decisions, they are decisions the on-premises malt beverage, off-premises malt beverage and wine shop permittees cannot make under the current rules. Therefore, depending on whether the permittees choose to act on this proposed allowance in the rules, there might be an impact.

It is very difficult, however, to quantify the potential impact of the rule change, given the lack of information. There are approximately 19,000 on-premises malt beverage, off-premises malt beverage and wine shop permits that are currently valid. Due to the requirement that a person have an on-premises or off-premises malt beverage permit or a wine shop permit to fill or refill growlers on demand and not a separate specific permit, unless the ABC Commission were to conduct a survey of currently permitted establishments, the commission cannot estimate the number of establishments that already have the required permits that will offer this service.

The ABC Commission has identified fewer than twenty businesses that have opened to specifically provide filling and refilling of growlers on demand. Prior to this proposed rule adoption, only breweries were allowed to fill and refill growlers on demand with malt beverages.

Due to significant uncertainty regarding how many permittees will choose to fill or refill growlers on demand and whether the cleaning and filling methods outlined in this rule are significantly different from what the permittees would do in the absence of the rule, it is unclear whether the rule change would have a substantial economic impact (i.e., an aggregate impact over \$1 million per year) or not.

If a permittee chooses to provide this service and the establishment did not have a three-compartment sink or a mechanical washing and sanitizing machine, the minimum standard of filling a growler requires that the permittee have a container with sanitizer and five tubes per every ten taps. Each tube would cost less than \$1. Each container that can hold the tubes and liquid food grade sanitizer would cost approximately \$13. With this information, a permittee would need to invest at least \$18 per ten taps plus the cost of liquid sanitizer. Due to the ABC Commission's inability to obtain information as to the number of permittees that will offer this service and the number of taps individual permittees will use, the commission is unable to estimate a range of potential costs to permittees related to the proposed rules.

The commission invites comments from stakeholders regarding the potential impact of the proposed rules on the costs involved in sanitizing growlers for fills and refills on demand.

Impact on State Government

There will be no impact on state government.

APPENDIX

04 NCAC 02T .0309 is proposed for adoption as follows:

04 NCAC 02T .0309 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING

- (a) Filling and refilling growlers will only occur on demand by a customer.
- (b) Growlers shall only be filled or refilled by a permittee or the permittee's employee.
- (c) Prior to filling or refilling a growler, the growler and its cap shall be cleaned and sanitized by the permittee or the permittee's employee using one of the following methods:

- (1) Manual washing in a three compartment sink:
 - (A) Prior to starting, clean sinks and work area to remove any chemicals, oils or grease from other cleaning activities;
 - (B) Empty residual liquid from the growler to a drain. Growlers shall not be emptied into the cleaning water;
 - (C) Clean the growler and cap in water and detergent. Water temperature shall be at a minimum 110°F or the temperature specified on the cleaning agent manufacturer's label instructions. Detergent shall not be fat or oil based.
 - (D) Remove any residues on the interior and exterior of the growler and cap;
 - (E) Rinse the growler and cap in the middle compartment with water. Rinsing may be from the spigot with a spray arm, from a spigot or from the tub as long as the water for rinsing shall not be stagnant but shall be continually refreshed;
 - (F) Sanitize the growler and cap in the third compartment. Chemical sanitizer shall be used in accordance with the EPA-registered label use instructions and shall meet the minimum water temperature requirements of that chemical; and
 - (G) A test kit or other device that accurately measures the concentration in MG/L of chemical sanitizing solutions shall be provided and be readily accessible for use; or
- (2) Mechanical washing and sanitizing machine:
 - (A) Mechanical washing and sanitizing machines shall be provided with an easily accessible and readable data plate affixed to the machine by the manufacturer and shall be used according to the machine's design and operation specifications;
 - (B) Mechanical washing and sanitizing machines shall be equipped with chemical or hot water sanitization;
 - (C) Concentration of the sanitizing solution or the water temperature shall be accurately determined by using a test kit or other device; and
 - (D) The machine shall be regularly serviced based upon the manufacturer's or installer's guidelines;

- (d) Notwithstanding Paragraph (b), a growler may be filled or refilled without cleaning and sanitizing the growler as follows:

- (1) Filling or refilling a growler with a tube as referenced by Paragraph (e):
 - (A) Food grade sanitizer shall be used in accordance with the EPA-registered label use instructions;
 - (B) A container of liquid food grade sanitizer shall be maintained for no more than 10 malt beverage taps that will be used for filling and refilling growlers;
 - (C) Each container shall contain no less than five tubes that will be used only for filling and refilling growlers;
 - (D) The growler is inspected visually for contamination;
 - (E) The growler is filled or refilled with a tube as described in Paragraph (e);
 - (F) After each filling or refilling of a growler, the tube shall be immersed in the container with the liquid food grade sanitizer; and
 - (G) A different tube from the container shall be used for each fill or refill of a growler; or
 - (2) Filling a growler with a contamination-free process:
 - (A) The growler is inspected visually for contamination;
 - (B) The growler shall only be filled or refilled by a permittee or the permittee's employee; and
 - (C) Is otherwise in compliance with the FDA Food Code 2009, Section 3-304.17(c).
- (e) Growlers shall be filled or refilled from the bottom of the growler to the top with a tube that is attached to the malt beverage faucet and extends to the bottom of the growler or with a commercial filling machine.
- (f) When not in use, tubes to fill or refill growlers shall be immersed and stored in a container with liquid food grade sanitizer.
- (g) After filling or refilling a growler, the growler shall be sealed with a cap.

History Note: Authority G.S. 18B-100; 18B-206(a); 18B-207; 18B-1001(1), (2) and (16); FDA Food Code 2009, Section 3-304.17(c) and Section 4-204.13(a), (b) and (d); Eff. October 1, 2014; Temporary Adoption Eff. October 25, 2013.